

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SUSANNE CIPOLLA OLMOS : ORDER
 : DTA NO. 825955
for Revision of Determinations or for Refund of Sales and :
Use Taxes under Articles 28 and 29 of the Tax Law for :
the Periods December 1, 1999 through August 31, 2001 :
and March 1, 2002 through August 31, 2002.¹ :

Petitioner, Susanne Cipolla Olmos,² filed a petition for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods December 1, 1999 through August 31, 2001, and March 1, 2002 through August 31, 2002.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Leo Gabovich), brought a motion filed on July 18, 2014, seeking an order of dismissal or, in the alternative, summary determination in the above-referenced matter pursuant to sections 3000.5, 3000.9(a)(1)(i) and 3000.9(b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Accompanying the motion was the affidavit of Leo Gabovich, dated July 16, 2014, and annexed exhibits. Petitioner, appearing by Rosemary Hayden, Esq., did not file a response to the Division of Taxation's motion. Accordingly, the 90-day period for issuance of this order began

¹ The petition lists the periods at issue as March 1, 1999 through August 31, 2001, and March 1, 2002 through August 31, 2002. However, the petition challenges 14 assessment numbers pertaining to the periods listed above. The caption has been modified, accordingly.

² Petitioner's name also appears as Susanne Cipolla on documents in the record.

on August 18, 2014,³ the due date for petitioner's response. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Winifred M. Maloney, Administrative Law Judge, renders the following order.

ISSUE

Whether petitioner filed a timely Request for Conciliation Conference with the Bureau of Conciliation and Mediation Services following the issuance of 14 statutory notices.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioner, Susanne Cipolla, at a Baldwin, New York, address, a series of statutory notices, each dated January 23, 2003, as follows:

a. Notice of Estimated Determination (Assessment ID No. L-021963615-3) that assessed sales and use taxes in the amount of \$750.00, plus penalty and interest, for a total amount due of \$932.95 for the period March 1, 2002 through May 31, 2002;

b. Notice of Estimated Determination (Assessment ID No. L-021963616-2) that assessed sales and use taxes in the amount of \$750.00, plus penalty and interest, for a total amount due of \$1,076.07 for the period June 1, 2001 through August 31, 2001;

c. Notice of Estimated Determination (Assessment ID No. L-021963617-1) that assessed sales and use taxes in the amount of \$5,463.67, plus penalty and interest, for a total amount due of \$8,199.94 for the period March 1, 2001 through May 31, 2001;

d. Notice of Estimated Determination (Assessment ID No. L-021963618-9) that assessed sales and use taxes in the amount of \$5,463.67, plus penalty and interest, for a total amount due

³ Since August 17, 2014 fell on a Sunday, petitioner had until Monday, August 18, 2014, to file a response to the Division's motion (*see* General Construction Law § 20).

of \$8,457.69 for the period December 1, 2000 through February 28, 2001;

e. Notice of Determination (Assessment ID No. L-021963620-8) that assessed sales and use taxes in the amount of \$5,463.68, plus penalty and interest, for a total amount due of \$9,097.90 for the period March 1, 2000 through May 31, 2000; and

f. Notice of Estimated Determination (Assessment ID No. L-021963621-7) that assessed sales and use taxes in the amount of \$2,106.48, plus penalty and interest, for a total amount due of \$3,595.87 for the period December 1, 1999 through February 29, 2000.

Each of the five notices of estimated determination was issued because petitioner was determined to be an officer or responsible person of Petite Madame, Inc. (Petite Madame) and advised that an estimated assessment had been issued because a required tax return was not filed by Petite Madame. The Notice of Determination was also issued because petitioner was determined to be an officer or responsible person of Petite Madame.

2. The Division issued to petitioner a Notice of Estimated Determination (Assessment ID No. L-021963614-4) dated February 14, 2003, which is addressed to petitioner at the Baldwin, New York, address. The notice assessed sales and use taxes in the amount of \$750.00, plus penalty and interest, for a balance due in the amount of \$892.13 for the period May 1, 2002 through August 31, 2002. This Notice of Estimated Determination was issued because petitioner was determined to be an officer or responsible person of Petite Madame.

3. The Division issued to petitioner at the Baldwin, New York, address, a series of statutory notices, each dated February 20, 2003, as follows:

a. Notice of Estimated Determination (Assessment ID No. L-022035261-3) that assessed sales and use taxes in the amount of \$3,167.98, plus penalty and interest, for a total amount due of \$4,789.89 for the period March 1, 2001 through May 31, 2001;

b. Notice of Estimated Determination (Assessment ID No. L-022035262-2) that assessed sales and use taxes in the amount of \$3,167.98, plus penalty and interest, for a total amount due of \$4,940.43 for the period December 1, 2000 through February 28, 2001;

c. Notice of Estimated Determination (Assessment ID No. L-022035263-1) that assessed sales and use taxes in the amount of \$3,167.98, plus penalty and interest, for a total amount due of \$5,060.24 for the period September 1, 2000 through November 30, 2000;

d. Notice of Estimated Determination (Assessment ID No. L-022035264-9) that assessed sales and use taxes in the amount of \$3,236.12, plus penalty and interest, for a total amount due of \$5,296.75 for the period May 1, 2000 through August 31, 2000;

e. Notice of Determination (Assessment ID No. L-022035265-8) that assessed sales and use taxes in the amount of \$3,167.99, plus penalty and interest, for a total amount due of \$5,315.08 for the period March 1, 2000 through May 31, 2000; and

f. Notice of Determination (Assessment ID No. L-022035266-7) that assessed sales and use taxes in the amount of \$1,856.92, plus penalty and interest, for a total amount due of \$3,193.93 for the period December 1, 1999 through February 29, 2000.

Each of the four notices of estimated determination was issued because petitioner was determined to be an officer or responsible person of Mexloco Corporation (Mexloco) and advised that an estimated assessment had been issued because a required tax return was not filed by Mexloco. The two notices of determination were also issued because petitioner was determined to be an officer or responsible person of Mexloco.

4. By letter to the Division's Bureau of Conciliation and Mediation Services (BCMS) dated August 20, 2013, petitioner's representative requested a conciliation conference for 11 notices of estimated determination (Notice numbers L-021963621-7; L- 022035264-9; L-

022035263-1; L-0219636619-8; L-022035262-2; L-021963618-9; L-022035261-3; L-021963617-1; L-021963616-2; L-021963615-3; and L-021963614-4) and three notices of determination (Notice numbers L-022035266-7; L-022035265-8; and L-021963620-8).

Attachments to the letter included copies of consolidated statements of tax liabilities dated July 2, 2013 and June 17, 2010, respectively, and an executed power of attorney form appointing Rosemary Hayden, Esq., as petitioner's representative. Documents included with the request list petitioner's address as Venice, California.

5. On September 6, 2013, BCMS issued a Conciliation Order Dismissing Request (CMS No. 258751) to petitioner. The order determined that petitioner's protest of the 14 statutory notices, i.e., Notice numbers L-021963614; L-021963615; L-021963616; L-021963617; L-021963618; L-021963619; L-021963620; L-021963621; L-022035261; L-022035262; L-022035263; L-022035264; L-022035265; and L-022035266) was untimely and stated, in part:

The Tax Law requires that a request be filed within 90 days from the mailing date of the statutory notice. Since the notices were issued on January 23, 2003, February 14, 2003, and February 20, 2003, but the request was not mailed until August 20, 2013, or in excess of 90 days, the request is late filed.

6. On November 8, 2013, the Division of Tax Appeals received a petition dated November 6, 2013 that stated, in pertinent part, that petitioner timely responded to the Division's statement of tax liabilities indicating in the Disagreement with Findings Section that she was not the responsible party, and that any notices mailed to her were responded to immediately. Petitioner further asserted that the next action taken was withdrawals from her account and that she received no further communication from the Division. The petition lists petitioner's address as the Venice, California, address. The only documents attached to the petition were copies of: the Conciliation Order Dismissing Request (CMS No. 258751) dated September 6, 2013; the

Consolidated Statement of Tax Liabilities, dated July 2, 2013; and the executed power of attorney appointing Rosemary Hayden, Esq., as petitioner's representative.

7. In support of its motion to prove mailing of 13 statutory notices under protest, the Division submitted, among other documents, the following: (i) the petition of Susanne Cipolla Olmos, dated November 6, 2013, that was stamped received by the Division of Tax Appeals on November 8, 2013; (ii) five notices of estimated determination, each dated January 23, 2003, and accompanying mailing cover sheets; (iii) one Notice of Determination, dated January 23, 2003, and the accompanying mailing cover sheet; (iv) an affidavit, dated July 1, 2014, of Daniel A. Maney, a Taxpayer Services Specialist 4 and Manager of the Refunds, Deposits, Overpayments and Control Units, which includes the Division's Case and Resource Tracking System (CARTS) Control Unit; (v) an affidavit, dated July 2, 2014 of Bruce Peltier, a Principal Mail and Supply Supervisor in the Division's Mail Processing Center; (vi) the "Assessments Receivable Certified Record for Non-Presort Mail" (CMR) postmarked February 7, 2003; (vii) a Notice of Estimated Determination, dated February 14, 2003, and the accompanying mailing cover sheet; (viii) a second affidavit, dated July 1, 2014, of Daniel Maney; (ix) a second affidavit, dated July 2, 2014 of Bruce Peltier; (x) the "Assessments Receivable Certified Record for Non-Presort Mail" (CMR) postmarked February 14, 2003; (xi) four notices of estimated determination, each dated February 20, 2003, and accompanying mailing cover sheets; (xii) two notices of determination, each dated February 20, 2003, and corresponding mailing cover sheets; (xiii) a third affidavit, dated July 1, 2014, of Daniel Maney; (xiv) a third affidavit, dated July 2, 2014 of Bruce Peltier; (xv) the "Assessments Receivable Certified Record for Non-Presort Mail" (CMR) postmarked February 20, 2003; and (xvi) a transcript of petitioner's New York State personal income tax return (form IT-201) for the year 1998, filed on November 4, 1999.

8. As noted, the Division submitted six affidavits pertaining to the mailing of 13 statutory notices. The first affidavit was that of Daniel A. Maney, a Taxpayer Services Specialist 4 and Manager of the Division's CARTS Control Unit, attached to which were copies of the 29-page CMR; the notices of estimated determination, each dated January 23, 2003, and corresponding mailing cover sheets; and the notices of determination, each dated January 23, 2003, and corresponding mailing cover sheets.. Mr. Maney's duties include supervising the processing of notices of estimated determination and notices of determination prior to shipment to the Division's mail room. Mr. Maney's affidavit sets forth the Division's general practice and procedure for processing statutory notices. Mr. Maney averred that he held his current position with the Division since January 2010 and is fully knowledgeable of past and present procedures for processing statutory notices. These procedures have not changed since 1992.

9. Mr. Maney receives from CARTS the computer-generated CMR and the corresponding notices. The notices are predated with the anticipated date of mailing. The CMR is produced approximately 10 days in advance of the anticipated date of mailing and the date and time of such production is listed in the upper left corner on each page of the CMR, using the year, the numeric ordinal day of the year and military time of day. Following the Division's general practice, this date was manually changed on the first page of the CMR to the actual mailing date of "2/7." It is also the Division's general practice that all pages of the CMR are connected when the documents are delivered into the possession of the USPS and remain so when returned to its office. The pages of the CMR remain connected unless ordered otherwise by Mr. Maney. The page numbers of the CMR run consecutively, starting with "PAGE:1," and are noted in the upper right corner of each page.

10. All notices are assigned a certified control number. The certified control number of

each notice is listed on a separate one-page mailing cover sheet, which also bears a bar code, the mailing address and the Departmental return address on the front, and taxpayer assistance information on the back. The certified control number is also listed on the CMR under the heading "Certified No." The CMR lists each notice in the order the notices are generated in the batch. The assessment numbers are listed under the heading "Reference No." The names and addresses of the recipients are listed under "Name of Addressee, Street, and P.O. Address."

11. According to the Maney affidavit, statutory notices (Notice numbers L-021963615, L-021963616, L-021963617, L-021963618, L-021963620 and L-021963621) scheduled to be mailed on January 23, 2003 were part of a batch of notices that were not mailed until February 7, 2003.

12. The CMR for the block of statutory notices issued on February 7, 2003, including the statutory notices issued to Susanne Cipolla, consists of 29 pages and lists 314 certified control numbers along with corresponding assessment numbers, names and addresses. Each page of the CMR includes 11 such entries with the exception of page 29, which contains 6 such entries. Portions of the CMR not relevant to this matter have been redacted to preserve the confidentiality of information relating to other taxpayers. A USPS employee affixed a USPS postmark dated February 7, 2003, of the Colonie Center branch of the USPS, to each page of the CMR and initialed page 29.

13. Page 18 of the February 7, 2003 CMR indicates that five notices of estimated determination and one Notice of Determination with certified control numbers 7104 1002 9739 0153 9933; 7104 1002 9739 0153 9940; 7104 1002 9739 0153 9957; 7104 1002 9739 0153 9964; 7104 1002 9739 0153 9971; and 7104 1002 9739 0153 9988 and assessment numbers L-021963615; L-021963616; L-021963617; L-021963618; L-021963620; and L-021963621,

respectively, were mailed to “Cipolla-Susanne,” at the Baldwin, New York, address. The corresponding mailing cover sheets bear the certified control numbers and petitioner’s name and address as previously noted.

14. The affidavit of Bruce Peltier, a supervisor in the Division’s mail room since 1999 and currently Principal Mail and Supply Supervisor in the Division’s mail room, describes the mail room’s general operations and procedures. The mail room receives the notices in an area designated for “Outgoing Certified Mail.” Each notice is preceded by a mailing cover sheet. A CMR is also received by the mail room for each batch of notices. A staff member retrieves the notices and mailing cover sheets and operates a machine that puts each notice and mailing cover sheet into a windowed envelope. That staff member then weighs, seals and places postage on each envelope. The first and last pieces listed on the CMR are checked against the information contained on the CMR. A clerk then performs a random review of 30 or fewer pieces listed on the CMR by checking those envelopes against information contained on the CMR. A staff member then delivers the envelopes and the CMR to one of the various USPS branches located in the Albany, New York, area. A USPS employee affixes a postmark and also places his or her signature or initials on the CMR, indicating receipt by the post office. The mail room further requested that the USPS either circle the total number of pieces received or indicate the total number of pieces received by writing the number on the last page of the CMR.

15. As noted, the USPS employee affixed a postmark dated February 7, 2003 to each page of the CMR. On the last page of the CMR, page 29, the USPS employee circled the preprinted number “314” corresponding to the heading “TOTAL PIECES AND AMOUNTS,” and wrote his or her initials near the USPS postmark dated February 7, 2003. The affixation of the postmarks, the postal service employee’s initials, and the circling of the number 314 indicating that all such

pieces were received, confirm that the five notices of estimated determination and the Notice of Determination, each dated January 23, 2003, were received by the USPS on February 7, 2003.

16. With respect to the mailing of the February 14, 2003 Notice of Estimated Determination, the four February 20, 2003 notices of estimated determination and the two February 20, 2003 notices of determination, the Division submitted a second and a third set of affidavits from Daniel A. Maney and Bruce Peltier. Each of the additional affidavits sets forth the same introductory paragraphs regarding the respective affiants title and job duties and the standard mailing procedures of the Division.

17. Attached as an exhibit to Mr. Maney's second affidavit is a 14-page CMR, on each page of which is listed an initial production date that is approximately 10 days in advance of the anticipated date of mailing. Following the Division's general practice, the date was manually changed on the first page to "2/14/03," to reflect the actual mailing date. This 14-page CMR lists 149 certified control numbers along with corresponding assessment numbers, names and addresses. Each page of the CMR includes 11 such entries with the exception of page 14, which contains 6 such entries. Portions of the CMR not relevant to this matter have been redacted to preserve the confidentiality of information relating to other taxpayers.

18. Page 10 of this 14-page CMR indicates that a Notice of Estimated Determination, assigned certified control number 7104 1002 9739 0155 6565 and assessment number L-021963614, was mailed to "Cipolla-Susanne" at the Baldwin, New York, address listed thereon. The corresponding mailing cover sheet bears this certified control number and the name, "Cipolla-Susanne," and the Baldwin, New York, address.

19. Review of this 14-page CMR indicates that a USPS employee affixed a postmark dated February 14, 2003, of the Colonie Center branch of the USPS, to each page of the CMR

and also wrote his or her initials on each such page. On the last page, page 14, the USPS employee circled the preprinted number “149” corresponding to the heading “TOTAL PIECES AND AMOUNTS.” The affixation of the postmarks, the postal service employee’s initials and the circling of the number 149 indicating that all such were received, confirm that the Notice of Estimated Determination dated February 14, 2003 was received by the USPS on that date.

20. Attached as an exhibit to Mr. Maney’s third affidavit is a 79-page CMR, on each page of which is listed an initial production date that is approximately 10 days in advance of the anticipated date of mailing. Following the Division’s general practice, the date was manually changed on the first page to “2/20/03,” to reflect the actual mailing date. This 79-page CMR lists 868 certified control numbers along with corresponding assessment numbers, names and addresses. Each page of the CMR includes 11 such entries with the exception of page 79, which contains 10 such entries. Portions of the CMR not relevant to this matter have been redacted to preserve the confidentiality of information relating to other taxpayers.

21. Page 58 of this 79-page CMR indicates that four notices of estimated determination, assigned certified control numbers 7104 1002 9730 1957 2518; 7104 1002 9730 1957 2525; L-7104 1002 9730 1957 2532; and 7104 1002 9730 1957 2549 and assessment numbers L-022035261; L-022035262; L-022035263; and L-022035264, respectively, were mailed to “Cipolla-Susanne,” at the Baldwin, New York, address. The corresponding mailing cover sheets bear the certified control numbers and petitioner’s name and address as previously noted.

22. Page 59 of this 79-page CMR indicates that two notices of determination, assigned certified control numbers 7104 1002 9730 1957 2556 and 7104 1002 9730 1957 2563 and assessment numbers L-022035265 and L-022035266, respectively, were mailed to “Cipolla-Susanne,” at the Baldwin, New York, address. The corresponding mailing cover sheets bear the

certified control numbers and petitioner's name and address as previously noted.

23. Review of this 79-page CMR indicates that a USPS employee affixed a postmark dated February 20, 2003, of the Colonie Center branch of the USPS, to each page of the CMR. On the last page, page 79, the USPS employee circled the preprinted number "868" corresponding to the heading "TOTAL PIECES AND AMOUNTS," and wrote his or her initials or signature. The affixation of the postmarks, the postal service employee's initials or signature and the circling of the number 868 indicating that all such were received, confirm that the four notices of estimated determination and the two notices of determination, each dated February 20, 2003, were received by the USPS on that date.

24. The transcript of Susanne Cipolla's New York State personal income tax return (form IT-201) for the year 1998, filed on November 4, 1999, reported her address as Baldwin, New York 11510. This was the last return filed by Ms. Cipolla prior to the issuance of the 13 statutory notices. This address corresponds with the address on the three CMRs and the statutory notices that were sent to Susanne Cipolla.

25. The Division did not submit any documentation to prove mailing of the Notice of Estimated Determination (Notice number L-021963619) for the period September 1, 2000 through November 30, 2000.

CONCLUSIONS OF LAW

A. The Division brings this motion to dismiss the petition under section 3000.9(a) of the Rules of Practice and Procedure (Rules) or, in the alternative, summary determination under section 3000.9(b). As the petition in this matter was timely filed, the Division of Tax Appeals has jurisdiction over the petition, and accordingly, a motion for summary determination under section 3000.9(b) of the Rules is the proper vehicle to consider the timeliness of petitioner's

request for conciliation conference. This order will address the instant motion as such.

B. A motion for summary determination shall be granted:

if, upon all papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party (20 NYCRR 3000.9[b][1]).

C. In the instant matter, petitioner did not respond to the Division's motion and, therefore, has conceded that no question of fact requiring a hearing exists (*see Kuehne & Nagel v. Baiden*, 36 NY2d 539, 544 [1975]; *John William Costello Assocs. v. Standard Metals*, 99 AD2d 227 [1984], *appeal dismissed* 62 NY2d 942 [1984]). In addition, petitioner has submitted no evidence to contest the facts alleged by the Peltier and Maney affidavits; consequently, those facts may be deemed admitted.

D. A taxpayer may protest a notice of determination by filing a petition for a hearing with the Division of Tax Appeals within 90 days from the date of mailing of such notice (Tax Law § 1138[a][1]). Alternatively, a taxpayer may contest a notice by filing a request for a conciliation conference with the Bureau of Conciliation and Mediation Services "if the time to petition for such hearing has not elapsed" (Tax Law § 170[3-a][a]). It is well established that the 90-day statutory time limit for filing either a petition or a request for a conciliation conference is strictly enforced and that, accordingly, protests filed even one day late are considered untimely (*see e.g. Matter of American Woodcraft*, Tax Appeals Tribunal, May 15, 2003; *Matter of Maro Luncheonette*, Tax Appeals Tribunal, February 1, 1996). This is because, absent a timely protest, a notice of determination becomes a fixed and final assessment and, consequently, the Division of Tax Appeals is without jurisdiction to consider the substantive merits of the protest (*see Matter of Lukacs*, Tax Appeals Tribunal, November 8, 2007; *Matter of Sak Smoke Shop*,

Tax Appeals Tribunal, January 6, 1989).

E. Where, as here, the timeliness of a petition or request for conciliation conference is at issue, the initial inquiry is whether the Division has carried its burden of demonstrating proper mailing by certified or registered mail to petitioner's last known address (Tax Law § 1147[a][1]; *see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991). To prove the fact and date of mailing of the subject notices, the Division must make the following showing:

“first, there must be proof of a standard procedure used by the Division for the issuance of the statutory notices by one with knowledge of the relevant procedures; and second, there must be proof that the standard procedure was followed in the particular instance in question” (*Matter of United Water New York, Inc.*, Tax Appeals Tribunal, April 1, 2004; *see Matter of Katz*).

F. In this case, the Division has introduced adequate proof of its standard mailing procedures through the affidavits of Mr. Maney and Mr. Peltier, Division employees involved in and possessing knowledge of the process of generating and issuing statutory notices (*see Matter of Victory Bagel Time*, Tax Appeals Tribunal, September 13, 2012).

G. The 29-page CMR provides sufficient documentary proof to establish that five notices of estimated determination, dated January 23, 2013, and a Notice of Determination, dated January 23, 2013, were mailed by certified mail to petitioner at her last known address on February 7, 2003. The 29-page document listed 314 certified control numbers with corresponding names and addresses. Each page of the CMR bears a USPS postmark dated February 7, 2003. On the last page of the CMR, the postal employee circled the preprinted number “314” to indicate the number of pieces of certified mail received at the post office, and wrote his or her initials near the USPS postmark dated February 7, 2003. The CMR has thus been properly completed and therefore constitutes highly probative documentary evidence of

both the date and fact of mailing (*see Matter of Rakusin*, Tax Appeals Tribunal, July 26, 2001). Further, petitioner's address on the notices, the corresponding mailing cover sheets and the CMR conform with the address reported on her 1998 personal income tax return filed on November 4, 1999, which satisfies the "last known address" requirement in Tax Law § 1138(a)(1). It is concluded that the five notices of estimated determination, dated January 23, 2003, and the Notice of Determination, dated January 23, 2003, were properly mailed and thus, the statutory 90-day time limit to file either a Request for Conciliation Conference with BCMS or a petition with the Division of Tax Appeals commenced on February 7, 2003 (Tax Law §§ 170[3-a][b]; 1138[a][1]).

H. The 14-page CMR provides sufficient documentary proof to establish that a Notice of Estimated Determination, dated February 14, 2003, was mailed by certified mail to petitioner at her last known address. The 14-page document listed 149 certified control numbers with corresponding names and addresses. Each page of the CMR bears a USPS postmark dated February 14, 2003 and the initials of a USPS employee. The postal employee circled the preprinted number "149" on the last page of the CMR to indicate the number of pieces of certified mail received at the post office. The CMR has thus been properly completed and therefore constitutes highly probative documentary evidence of both the date and fact of mailing (*see Matter of Rakusin*). Further, petitioner's address on the notices, the corresponding mailing cover sheets and the CMR conform with the address reported on her 1998 personal income tax return filed on November 4, 1999, which satisfies the "last known address" requirement in Tax Law § 1138(a)(1). It is concluded that the Notice of Estimated Determination, dated February 14, 2003, was properly mailed and thus, the statutory 90-day time limit to file either a Request for Conciliation Conference with BCMS or a petition with the Division of Tax Appeals

commenced on February 14, 2003 (Tax Law §§ 170[3-a][b]; 1138[a][1]).

I. The 79-page CMR provides sufficient documentary proof to establish that four notices of estimated determination, dated February 20, 2003, and two notices of determination, dated February 20, 2003, were mailed by certified mail to petitioner at her last known address. The 79-page document listed 868 certified control numbers with corresponding names and addresses. Each page of the CMR bears a USPS postmark dated December 15, 2008. On the last page of the CMR, the postal employee circled the preprinted number “254” to indicate the number of pieces of certified mail received at the post office, and wrote his or her initials or signature. The CMR has thus been properly completed and therefore constitutes highly probative documentary evidence of both the date and fact of mailing (*see Matter of Rakusin*). Further, petitioner’s address on the notices, the corresponding mailing cover sheets and the CMR conform with the address reported on petitioner’s 1998 personal income tax return filed on November 4, 1999, which satisfies the “last known address” requirement in Tax Law § 1138(a)(1). It is concluded that the four notices of estimated determination, dated February 20, 2003, and the two notices of determination, dated February 20, 2003, were properly mailed and thus, the statutory 90-day time limit to file either a Request for Conciliation Conference with BCMS or a petition with the Division of Tax Appeals commenced on February 20, 2003 (Tax Law §§ 170[3-a][b]; 1138[a][1]).

J. In order to timely protest the five notices of estimated determination and the Notice of Determination issued on February 7, 2003, petitioner was required to file a petition or a request for a conciliation conference within 90 days of February 7, 2003, i.e., on or before May 8, 2003. In order to timely protest the Notice of Estimated Determination on February 14, 2003, petitioner was required to file a petition or a request for a conciliation conference within 90 days of

February 14, 2003, i.e., on or before May 15, 2003. In order to timely protest the four notices of estimated determination issued on February 20, 2003, petitioner was required to file a petition or a request for a conciliation conference within 90 days of February 20, 2003, i.e., on or before May 21, 2003. Petitioner's request for a conciliation conference in protest of the above noted 13 statutory notices was filed on August 20, 2013, well beyond the expiration of the 90-day period of limitations for protesting the statutory notices issued on February 7, 2003, the statutory notices issued on February 14, 2003 and those statutory notices issued on February 20, 2003. Petitioner's request was therefore untimely filed (*see* Tax Law § 1138[a][1],[2]; § 170[3-a][b]).

K. In her petition, petitioner claimed that she timely responded to any notices mailed to her. However, petitioner has not offered any evidence to meet her burden to prove that any timely protest was filed before the 90-day period of limitations for challenging the statutory notices issued on February 7, 2003, the statutory notices issued on February 14, 2003 or the statutory notices issued on February 20, 2003 expired. As such, the 10 notices of estimated determination and the three notices of determination became fixed and final assessments, and consequently, the Division of Tax Appeals is without jurisdiction to consider the merits of the protest of the same (*see Matter of Rotondi Industries*, Tax Appeals Tribunal, July 6, 2006; *Matter of Sak Smoke Shop*).

L. The Division's motion for summary determination is granted and the petition of Susanne Cipolla Olmos is denied for the 13 statutory notices (Notice numbers L-021963615, L-021963616, L-021963617, L-02163618, L-021963620, L-021963621, L-021963614, L-022035261, L-022035262, L-022035263, L-022035264, L-022035265, and L-022035266). A hearing will be scheduled in due course for Notice of Estimated Determination (Notice Number L-021963619).

DATED: Albany, New York
October 23, 2014

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE